

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

United States Patent No. 5,784,808

Issued: 28 July 1998

Inventor: Stan Hockerson, a U.S. citizen, of Albuquerque, NM

Assignee: Hockerson-Halberstadt, Inc. (a Louisiana corporation)

FOR: "Independent impact suspension athletic shoe"

ATTORNEY DOCKET NO.: A09027US (99413.1)

Response to Request for Information

Commissioner for Patents
Mail Stop Petitions
P.O. Box 1450
Alexandria, VA 22313-1450
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Sir:

This is in response to the Request for Information dated 13 August 2009. A non-extendable period of two months from the Request was given to provide a response, making the response due by 13 October 2009.

Attached are Supplemental Declarations of Richard E. Backus, Stan Hockerson, and John P. Halberstadt demonstrating that a docketing error which occurred under the auspices of Mr. Richard E. Backus was the proximate cause of the nonpayment of the 7.5-year Maintenance Fee.

The supplemental declarations are believed to be sufficient to show unavoidable delay, including information explaining that the docketing error was the cause of the delay at issue, that there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance, and that Mr. Backus was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon Mr. Backus represented the exercise of due care. The delay resulting from the docketing error on the part

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of Mr. Backus in the performance of a clerical function is the basis for showing unavoidable delay.

The supplemental declaration of Richard Backus identifies possible specific causes of the docketing error that unavoidably resulted in the 7.5-year maintenance fee not being paid. As Mr. Backus explains in his supplemental declaration, he did not have other clerical staff that performed the docketing functions for his practice. Mr. Backus was sufficiently trained and experienced with the function and routine of the docketing system and performed the clerical function on his own. Although the error was apparently made by an attorney, the attorney was acting in the capacity of a docket clerk. It was not a legal error, but a computer error of some sort.

As stated in their attached declarations, Stan Hockerson, the inventor and president of the assignee, and John Halberstadt, secretary/treasurer of the assignee, relied on Richard Backus to remind them to pay maintenance fees in United States Patent No. 5,784,808. Had they received a reminder from Mr. Backus, they would have authorized payment of the fee. Thus, the docketing error of Mr. Backus which caused him not to send a reminder letter to Stan Hockerson or John Halberstadt was the reason why the fee was not paid. Thus, the docketing error of Mr. Backus resulted in unavoidable delay in payment of the second maintenance fee.

It is respectfully submitted that the attached supplemental declarations, along with the prior declarations and attachments, are sufficient to show unavoidable delay of payment of the second maintenance fee, the steps taken to ensure timely payment, the date and manner in which the patentee was notified of the expiration of the patent, and the steps taken to file the petition timely. They are also believed to show that the docketing error was the proximate cause of the failure to pay the maintenance fee.

It is again respectfully requested that the 7.5-year maintenance fee be accepted, for the reasons presented above, in the attached declarations, and in prior petitions.

Applicant respectfully petitions the Commissioner for any extension of time necessary to render this paper timely.

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Please charge any additional fees due or credit any overpayment to Deposit Account No. 50-0694.

Respectfully submitted,

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